

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of JASHON LEE ROOT, ANTONIO
JAVON ROOT, JOSEPH DAVIS DILLARD, and
DAYVIONN MAURICE DILLARD

DEPARTMENT OF HUMAN SERVICES, f/k/a
FAMILY INDEPENDENCE AGENCY,

UNPUBLISHED
June 20, 2006

Petitioner-Appellee,

v

CHERYL LYNN ROOT

Respondent-Appellant.

No. 266847
Oakland Circuit Court
Family Division
LC No. 04-694260-NA

Before: Kelly, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Respondent appeals by right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

First, we find no abuse of discretion in the court's admission of the letter from Tobi Russell into evidence. Here, unlike the situation in *In re Gilliam*, 241 Mich App 133; 613 NW2d 748 (2000), the supplemental petition did not seek termination on the basis of new or changed circumstances. While the supplemental petition detailed respondent's failure to comply with the treatment plan, respondent's attending only three therapy sessions was not a "new circumstance" on the basis of which petitioner sought termination. See MCR 3.977(F)(1)(b). Rather, petitioner offered evidence of respondent's failure to regularly attend individual therapy to prove that respondent was unable to provide proper care or custody for her children. See *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Furthermore, any error in the admission of the letter was harmless where the relevant information contained in the letter was cumulative to Andrea Hardacre's testimony regarding respondent's individual therapy attendance, to which respondent did not object. MCR 2.613(A); *Sackett v Atyeo*, 217 Mich App 676, 685; 552 NW2d 436 (1996).

Furthermore, the trial court did not clearly err in finding that the statutory grounds for termination were established by clear and convincing evidence. MCR 3.977(J); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence clearly demonstrated that respondent

failed to comply with the treatment plan. Although respondent made some progress immediately before the best interests hearing, the evidence that respondent made only minimal progress in the almost year and a half since her children entered foster care was evidence that she would be unable to consistently meet the needs of her children, one of whom has special needs. Furthermore, the evidence did not show that termination of respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). Thus, the trial court did not err in terminating respondent's parental rights to the child.

We affirm.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter